IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.3055 OF 2004
IN
FIRST APPEAL NO.2225 OF 2006

Pandurang Ananda Khetmalis and Anr. ...Applicants

vs.

Baban Ramchandra Parbat ...Respondent

Mr.Pramod N. Patil for the Applicants.
Mr A.P.Kulkarni for the Respondent.

CORAM: A.S.OKA, J.
DATE : FEBRUARY 22,2007.

P.C.:

1. Heard Advocates for the parties. The Applicants are the Defendants in a suit for specific performance filed by the Respondent. The Trial Court, by the impugned Decree, has declined to grant decree for specific performance and has passed a decree for refund of Rs.1,27,000/- together with interest at the rate of 21% p.a. with effect from 19th January 1995 till the satisfaction of the decree.

2. Normally, the money decree cannot be stayed unless the entire amount is deposited.

3. I have perused the finding recorded in paragraph 5 of the impugned Judgment. Taking the said finding as correct, at highest, it will mean that the Applicants have received a total sum of Rs.1,10,500/-. Prima facie, it appears to me

that there is no basis for passing a decree in the sum of Rs.1,27,000/-. Moreover, the interest awarded at the rate of 21% p.m. appears to be prima facie illegal. Hence, the Applicants will have to be directed to deposit a sum of Rs.1,10,500/- and interest thereon at the rate of 6% p.a. from 19th January 1995 till the date of deposit.

4. Hence, Application is disposed by passing the following order :

i) There will be interim relief in terms of prayer clause (b) subject to the condition of the Applicants depositing a sum of Rs.1,10,500/- together with interest thereon at the rate of 6% p.a. from 19th January 1995 till today with the Trial Court within a period of four months from today.

ii) If the deposit is not made within time, interim stay will stand vacated without reference to the court. If deposit is made, the Trial Court will permit the Respondent to withdraw the said amount on furnishing adequate security for the said amount.

iii) The Applicants will be heard before accepting the security.

JUDGE